

FILED

2013 OCT -3 PM 12:55

**THE U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

BY _____
DEPUTY

NOEMI FRANCO,

Plaintiff,

vs.

THE CITY OF EL PASO, TEXAS.

Is being sued as a person

JOSE A. KLUGE,

In his individual and official capacities

OSCAR MARTINEZ,

In his individual and official capacities

MICHAEL LARA

In his individual and official capacities

Defendants,

JUDGE FRANK MONTALVO

CASE NO. _____

JUDGE:

EP 13 CV 0313

COMPLAINT FOR DEPRIVATION OF
RIGHTS UNDER 42 U.S.C. §1983, ET SEQ.;
COMPENSATORY DAMAGES and
PUNITIVE DAMAGES

DEMAND FOR TRIAL BY JURY

INTRODUCTION & OPENING STATEMENT

This is an action brought by Plaintiff against State Officials, in their respective roles and in their individual capacities and their Corporation of political subdivision, who, while acting under the color of law, did willfully and with intent deter, suppress, or otherwise breach some rights of Plaintiff guaranteed and protected by the Federal Constitution, particularly the 1st, 4th, 5th, 6th, 8th, and 14th Amendments.

I. JURISDICTION and VENUE

1 1. This action arises under 42 U.S.C. §1983 (Civil Action for Deprivation of Rights), 1985,
2 1986, and 1988. The jurisdiction of this court is founded on federal question jurisdiction, 28
3 U.S.C. §1331, this court also has original jurisdiction pursuant to 28 U.S.C. §1343.

4 2. Venue is proper because all events giving rise to Plaintiffs' causes of action occurred within
5 this district, as provided in 28 U.S.C. § 1391(b)(2).
6

7 8 **II. PARTIES**

9 3. Plaintiff, NOEMI FRANCO, herein after "Plaintiff", at all times relevant herein, was
10 domiciled in the city of EL PASO, TEXAS but now lives in Anthony, New Mexico. Plaintiff,
11 further, is licensed to practice Real Estate in the State of California.

12 4. Plaintiff is informed and believes that defendant JOSE A. KLUGE, hereinafter "JOSE" is
13 some level of EL PASO SEARGENT under the authority of the EL PASO COUNTY DISTRICT
14 COURT and, as such, was at all times relevant to this action, acting while an employed,
15 compensated, enriched and rewarded employee for the COUNTY OF EL PASO, a political
16 subdivision organized and existing under the laws of the State of Texas. JOSE A. KLUGE is
17 being sued in his individual and official capacities.
18

19 5. Plaintiff is informed and believes that defendant OSCAR MARTINEZ, hereinafter
20 "OSCAR" is some level of EL PASO COUNTY DETECTIVE under the authority of the EL
21 PASO COUNTY DISTRICT COURT and, as such, was at all times relevant to this action, acting
22 while an employed, compensated, enriched and rewarded employee for the COUNTY OF EL
23 PASO, a political subdivision organized and existing under the laws of the State of Texas.
24 "OSCAR" is being sued in his individual and official capacities.¹
25

26
27 ¹ An official capacity suit is, in all respects other than *name*, to be treated as a suit against the entity for which the
28 officer is an agent. *Kentucky v. Graham*, 473 U.S. 159, 166 (1985)

1 6. Defendant City of El Paso, Texas herein "El Paso" at all times relevant in this complaint was
2 and is a Municipal Corporation of the State of Texas, responsible for compensating, enriching,
3 rewarding and not properly training public servants. Defendant City of El Paso, Texas is being
4 sued as a "person".

5 6. Plaintiff is informed and believes that defendant "MICHAEL LARA", hereinafter
6 "MICHAEL" is some level of EL PASO COUNTY DETECTIVE under the authority of the EL
7 PASO COUNTY DISTRICT COURT and, as such, was at all times relevant to this action, acting
8 while an employed, compensated, enriched and rewarded employee for the COUNTY OF EL
9 PASO, a political subdivision organized and existing under the laws of the State of Texas.
10 "MIKE" is being sued in his individual and official capacities.
11

12
13 **GENERAL FACTUAL ALLEGATIONS**

14 1. On or about Wednesday, June 19, 2013 at approximately 4:00 p.m., Plaintiff, a State of
15 California Licensed Real Estate Agent, and her husband Dean Franco received a telephone
16 called by a "client" requesting an estimate about our granite business and also requested that
17 Plaintiff and her husband go to a specific address, in order to confer about installation and
18 prices. Upon arrival, Plaintiff and her husband Dean Franco were inside their vehicle
19 peacefully waiting for the "alleged" prospective client, outside Petro, 1295 Horizon Blvd., El
20 Paso, Texas 79927 where Plaintiff was being a passenger at that time.
21

22 2. Suddenly, "JOSE", "MICHAEL", AND "OSCAR" along with other males who were at
23 no point identified "ambushed" and obstructed Plaintiff's vehicle, "JOSE" approached the
24 passenger side of Plaintiff's vehicle and started "ordering" Plaintiff to step out of her vehicle,
25 which Plaintiff decline, several times. "JOSE", repeatedly continued to "order" Plaintiff to
26 step out of her vehicle.
27
28

1 3. Plaintiff inquired as to what she was being charged and who the complainant was?
2 “JOSE” at no time presented any document to Plaintiff demonstrating any lawful order granting
3 the reasonable seizure of Plaintiff person and personal property. “JOSE” continually reply “
4 We don’t have to show you or tell you anything, and if you don’t step out of your vehicle I will
5 pull you (Plaintiff) out by force, I will count to three, and you better step out, because I will pull
6 you (Plaintiff) out by force!.

8 4. Plaintiff refused to step out of her vehicle several times “stating” unless you (Defendants)
9 “show me required elements of Law” “I will not step out of my vehicle”, Plaintiff repeatedly
10 requested “JOSE’s” certified copy of his oath of office, surety bond, complaint and affidavit
11 under oath from the complainant, warrant for Plaintiff and Plaintiff’s husband arrest and
12 required elements of Law. “JOSE” refused and ignored Plaintiff’s requests, “stating” We
13 (defendants) don’t have to show you anything, proceeded to count to three and pulled her out of
14 her (Plaintiff’s) vehicle by force dislocating her right shoulder and bruising her right arm.

16 5. Simultaneously, Plaintiff looked over to see “MICHAEL”, and “OSCAR” ordering
17 Plaintiff’s husband (being the driver) to step out of the vehicle, whom humbly obeyed and
18 agreed to the detectives orders. (Defendants) proceeded to place plaintiff’s husband’s hands
19 behind his back, handcuffed him and then escorted him inside one of the private vehicles they
20 (Defendants) were driving, where there was lack of ventilation, no air conditioner inside the car,
21 windows rolled up, about 103° degrees outside.

23 6. Plaintiff’s husband suffers from serious health conditions, which are: (high blood
24 pressure, diabetes, and arthritis. Then, minutes later “JOSE” looked and approached Plaintiff’s
25 face and said to her “You see! Look at you husband, he is smart, he is being quiet, he is not
26 asking questions, like you, “!you ask a lot of questions!”

1 7. "JOSE" was visibly irritated and upset because Plaintiff was demanding "JOSE"'s Oath
2 of office, Surety bond, warrant for Plaintiff and Plaintiff's husband's arrest and required
3 elements of law. "JOSE" never showed said documents to Plaintiff or Plaintiff's husband then,
4 "JOSE" repeated to Plaintiff he didn't have to show her anything.

5 8. Raising his voice louder "JOSE" advised Plaintiff, " I am going to record you"! Ok?
6 Once JOSE was ready to record, then proceeded to ask her in an authoritative tone " how many
7 times did I have to ask you to step out of your vehicle"? " How many times"? "Why did I have
8 to ask you many times"? "Why did you try to lock your door? Why,? Why,?. Plaintiff acting
9 nervous, asked in response, "Once, two, times! maybe more, I don't know! And I didn't know
10 who you were, that is why I tried to lock my vehicle's door.

11 9. After "JOSE" finished recording the conversation, Then Plaintiff questioned "JOSE"
12 "Can I record you also? with sarcasm "JOSE" responded "Ja, ja are you ready to record me?
13 (Plaintiff is handcuffed at this point).

14 10. Out of fear Plaintiff informed "JOSE" she is a lawyer and advise him "I will see you in
15 Federal Court, I know my constitutional protected rights and your conduct is unreasonable,
16 consequently "I will sue you for deprivation of Rights under Title 42 U.S.C. § 1983. "JOSE"
17 replied "ho,ho,!, is it title 5, 1983? !O! Well, "I got a few of those lawsuits going on right now,
18 Plaintiff replied!, No, it is not Title 5, 1983, It is Title 42 U.S.C. § 1983.

19 11. Approximately, an hour passed and "MICHAEL" approached Plaintiff from a distance
20 showing her a warrant, stating "look,!! look," " we don't have to show you anything but, look",
21 this is the warrant! Plaintiff was unable to read said warrant from where Plaintiff was being
22 detained and apprehended by "JOSE" and another male.

1 12. At this point, Plaintiff noticed "MICHAEL" was inside Plaintiff's vehicle searching her
2 vehicle, personal documents and personal belongings, removing all items from Plaintiff's
3 vehicle, purse and wallet," MICHAEL" then, gave all Plaintiff's documents to "JOSE".

4 13. "JOSE" continued to ask (Plaintiff) several questions (for about an hour) about her
5 personal documents from the State Bar Association and other legal documents inside Plaintiff's
6 purse. Plaintiff at that moment noticed "MICHAEL" was inside Plaintiff's vehicle and was
7 driving Plaintiff's vehicle in order to place it in a towing truck AD Towing and Recovery.
8

9 14. Plaintiff's husband, (Dean Franco) observed everything that was happening from inside
10 the Defendants private vehicle where he was being detained and apprehended, under the
11 Defendant's custody, where Plaintiff's husband was being suffocated for lack of ventilation ,
12 no air conditioner inside the private vehicle, 103° degrees temperature outside. After,
13 approximately two hours, Plaintiff was escorted inside the detective's vehicle where she was
14 able to talk to her husband. Plaintiff and plaintiff's husband were transported to the Sheriff's
15 Station at 3850 Justice Drive.
16

17 15. Once at the Sheriff's Station, "JOSE" and "MICHAEL" continued being argumentative,
18 harassing Plaintiff, and again searching and researching Plaintiff's personal belongings and
19 purses. "JOSE" and "MICHAEL" removed all business cards, including Plaintiff's driver's
20 license and other private documents. Defendants "JOSE and "MICHAEL" asked Plaintiff
21 several questions, about a phone number (inside Plaintiff's purse) from the Texas Bar
22 association, Plaintiff couldn't remember what most of the business cards inside Plaintiff's
23 purse were all about, which that fact made "JOSE" upset and irritated.
24

25 16. Plaintiff was requesting and pleading to "JOSE" and "MICHAEL" to let her keep her
26 nicer purse because she had purchase it two days earlier, !they decline!, to later advise Plaintiff
27 "We are keeping your nicer purse "as evidence". Plaintiff inquired Defendants and requested
28

1 about Defendant's business cards (presentation cards) which they provided. Next, Plaintiff
2 kept quiet and said nothing else.

3 17. At this point, Plaintiff was being interrogated by detective ALAN GURTNER, whom
4 now and then was interrupted by "JOSE" and "MICHAEL" observing and asking Plaintiff
5 some more questions about paperwork inside her purse, Plaintiff was asked to sign some forms
6 about her detainment, (Plaintiff was not aware of what she was signing).
7

8 18. Approximately, two or three hours later, Plaintiff and Plaintiff's husband were
9 transported to downtown El Paso, Texas at Myrtle Street to stand in front of a Magistrate
10 Judge, so the Judge could read Plaintiff and Plaintiff's husband Miranda rights. But minutes
11 before entering the building and standing before the Magistrate Judge, Defendant "OSCAR"
12 "ordered" Plaintiff and Plaintiff's husband "not to ask any questions" ,(to the Judge) "just to
13 be quiet", and "not to speak", "don't say anything", "only listen to the Judge, because it is
14 getting late and we have to rush to the County jail.
15

16 19. Plaintiff and Plaintiff's husband were transported and escorted to the County jail where
17 Plaintiff noticed husband was not looking and feeling well, later husband advised Plaintiff "
18 when he (Dean Franco) was inside the detective's vehicle, he couldn't breath very well, he was
19 being suffocated inside the Defendants private vehicle where he was being detained and in the
20 Detective's custody. He (Dean Franco) was hitting the vehicle windows with his head, he was
21 being suffocated for lack of ventilation, or air conditioner inside the vehicle and was screaming
22 for aid, (!nobody noticed him at that moment!)
23

24 20. Once in the County Jail, Plaintiff's husband received advise from the County jail nurse,"
25 she advised Plaintiff's husband (Dean Franco) and stated that" "his blood pressure is too high",
26 he couldn't be booked or stay in jail, he should go to the hospital, next, "nurse" and Plaintiff
27
28

1 requested and pleaded to Defendant "OSCAR" if he could override him,(Plaintiff's husband)
2 because his blood pressure is too high. 350/180 mmHg.

3 Minutes later, Plaintiff questioned Defendant "OSCAR" "who is going to be
4 responsible for my husband's health and life? "he (Dean Franco) is in need of going to the
5 hospital and he is under your custody?. " Defendant "OSCAR" replied without remorse " he
6 (Dean Franco) is going to get out of jail any way.

7 21. An hour later Plaintiff noticed Plaintiff's husband being transported to Thomason
8 Hospital, where he would be treated for high blood pressure, diabetes and arthritis. Plaintiff
9 was concern and afraid for Plaintiff's husband's health and life.

10 22. Plaintiff was incarcerated for approximately fourteen hours, spent the night in jail, where
11 Plaintiff was served bread and oatmeal the next morning. At approximately 9:30 a.m.
12 Plaintiff's youngest daughter Brianna Franco posted (excessive bail) a \$ 10,000.00 Dtrs. bail
13 bond for each (Plaintiff and Plaintiff's husband) E.Z. Bond Co. The same day Plaintiff was
14 released from custody and her inventoried items returned.

15 23. Plaintiff was unable to recuperate her vehicle from the towing place AD, Towing and
16 Recovery until Saturday 22, 2013. Then, Plaintiff noticed all of her paperwork and personal
17 belongings upside down inside her vehicle. Plaintiff also remembers having some money
18 inside her vehicle, which Plaintiff never recovered. Plaintiff paid \$150.00 Dtrs. In order to get
19 her vehicle returned to her. Days after that, Plaintiff would call Defendant OSCAR
20 MARTINEZ every day, for five days in order to recuperate plaintiff's purse and personal
21 belongings, which at this point, said items were at the Detectives possession, " as evidence".

22 24. Defendant "OSCAR" later advised Plaintiff and Plaintiff's husband to go ahead and call
23 Detective "MICHAEL", he was in possession of Plaintiff's personal belongings, (for more than
24 eight days, MICHAEL read and search Plaintiff's affects and papers). two days later Plaintiff
25
26
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1 communicated with "MICHAEL" and said to him, "I would like to have my purse, papers,
2 affects and personal belongings returned to me please", he ("MICHAEL") agreed and advise
3 Plaintiff to go ahead and hire a Lawyer as soon as possible because she was going to need one
4 (Lawyer). "MICHAEL" requested Plaintiff to go ahead and come by the Sheriff's Office to
5 pick up said items. Plaintiff also informed "MICHAEL" "I love my public servants, but you
6 people (Detectives) habitually violate the rights of the people.
7

8 COUNT I

9 **(42.U.S.C. § 1983; Deterring, Suppressing, or breaching freedom of speech)**

10
11 25. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 24 above
12 and incorporates the same as if set forth in full.

13 26. Plaintiff, while being peacefully sitting inside Plaintiff's vehicle in company of her
14 husband, waiting for an "alleged" client, was arrested and deterred from speaking in
15 questioning Defendant Officer JOSE A. KLUGE, requesting documents and specific elements
16 of Law, requests were reasonable and not intrusive or offensive in any way. Had Plaintiff not
17 so acted, speaking, Plaintiff would not have been subjected to the punishment and rights
18 violations of JOSE A. KLUGE, MICHAEL LARA AND OSCAR MARTINEZ. Defendants
19 JOSE A. KLUGE, MICHAEL LARA AND OSCAR MARTINEZ specific to this deterring of
20 speech committed acts that extended beyond a "mere chilling" of, but clearly violated
21 Plaintiff's First Amendment rights and clearly established law. Further, said acts were
22 committed pursuant to a custom, practice or policy or a failure to train as to deter these rights
23 violations by these sergeants/detectives, and that County sergeants/detectives in service of this
24 County are deterring and suppressing the speech of individuals absent any violation of law.

25 27. As further direct result of the conduct of Defendants as set forth in this Count, Plaintiff has
26 suffer odium, emotional distress including but not limited to, frustration, anger, and anxiety, all
27 to her injury in the amount of \$250,000.00.
28

WHEREFORE Plaintiff prays for Punitive and General Damages against the Defendants jointly and severally.

COUNT II

(42 U.S.C. § 1983; Unreasonable seizure of Plaintiff's person)

28. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 27 above and incorporates the same as if set forth in full.

29. Plaintiff was unreasonably seized in her person by "JOSE", "MICHAEL", and "OSCAR" and arrested absent probable cause, warrant, court order, or any exigent circumstances that could in any way warrant any reasonable person to affect such a seizure of Plaintiff. Seizure of Plaintiff's person was also motivated by Plaintiff's requests of required elements of law. "JOSE", "MICHAEL" AND "OSCAR" acted with a retaliatory animus against Plaintiff, as a motivating factor to punish Plaintiff in retaliation for an Affidavit of no foundation that was sent in response to Defendant "OSCAR" on May 16, 2013 by Plaintiff. Plaintiff was deprived of her liberty therefrom.

30. Defendants "JOSE", "MICHAEL" AND "OSCAR" specific to this count, made an unreasonable seizure committed acts that clearly violated Plaintiff's Fourth Amendment rights and clearly established law. Further said acts were committed pursuant to a custom practice or policy.

31. As a further direct result of the conduct of Defendants as set forth in this Count, Plaintiff has suffer odium, emotional distress including but not limited to, severe depression, frustration, anger, loss of self worth, humiliation and loss of sleep, all to her injury in the amount of \$250,000.00.

WHEREFORE Plaintiff prays for Punitive and General Damages against Defendants jointly and severally.

COUNT 111

(42. U.S.C. § 1983; Unreasonable Seizure of Plaintiff's property without Due process)

Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 31 above and incorporates the same as if set forth in full.

32. Defendants "JOSE", "MICHAEL" AND "OSCAR" unreasonable seized Plaintiff's affect, "wallet, purses, Real Estate License from the State of California, personal identifications and Plaintiff's vehicle, absent any due process of law. Defendants "JOSE" "MICHAEL" AND "OSCAR" specific to this unreasonable seizure of plaintiff's affect "wallet, purse Real Estate License from the State of California, personal identification and Plaintiff's vehicle" committed acts that clearly violated Plaintiff's Fourth, Fifth and Fourteenth Amendment rights and clearly established law. Further, said acts were committed pursuant to a custom practice or policy.

33. As a further direct result of the conduct of defendants as set forth in this Count, Plaintiff suffered emotional distress included but not limited to odium, severe depression, frustration, anxiety, anger, loss of self worth, humiliation and loss of sleep, all to her injury in the amount of \$250,000.00

WHEREFORE Plaintiff prays for punitive and General Damages against the Defendants jointly and severally.

COUNT IV**(42 U.S.C. § 1983; Unreasonable Search of Plaintiff's Affects)**

34. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 33 above and incorporates the same as if set forth in full.

35. Plaintiff's property, including her purse, wallet, and vehicle were unreasonable reached by Defendants "JOSE", "MICHAEL" and "OSCAR". Specific to this unreasonable search of Plaintiff's effects committed acts that clearly violated Plaintiff's Fourth Amendment rights and clearly established law. Further, said acts committed pursuant to a custom practice or policy.

1 36. As a further direct result of the conduct of defendants as set forth in this Count,
2 Plaintiff has suffer odium, emotional distress including but not limited to, severe depression,
3 frustration, anger, loss of self worth, humiliation and loss of sleep, all to her injury in the
4 amount of \$250,000.00

5 WHEREFORE Plaintiff prays for Punitive and General Damages against the Defendants
6 jointly and severally.

7
8 **COUNT V**

9 **(42.S.C. § 1983; Unreasonable Seizure of Plaintiff's Affects and papers)**

10 37. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 though 36
11 above and incorporates the same as if set forth in full.

12 38. Defendants "JOSE", "MICHAEL" AND "OSCAR" unreasonable seized Plaintiff's
13 affects including her purse, wallet and papers.

14 39. Defendants "JOSE", "MICHAEL" AND "OSCAR" specific to this unreasonable
15 seizure of Plaintiff's affects committed acts that clearly violated Plaintiff's Fourth and
16 Fourteenth Amendment rights and clearly established law. Further, said acts were committed
17 pursuant to a custom practice or policy.

18 40. As a further direct result of the conduct of Defendants as set forth in this Count,
19 Plaintiff suffered emotional distress included but not limited to odium, severe depression,
20 frustration, anxiety, anger, loss of self worth, humiliation and loss of sleep all to her injury in the
21 amount of \$150,000.00

22 WHEREFORE Plaintiff prays for Punitive and general Damages against the defendants
23 jointly and severally.

24
25 **COUNT VI**

26 **(Assault and Battery)**

1 41. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 40
2 above and incorporates the same as if set forth in full.

3 42. Defendant "JOSE", AND "MICHAEL" did intentionally and offensively contact
4 Plaintiff's body and did handcuff Plaintiff thereby gaining physical control over Plaintiff and
5 did, thereby, assault and batter Plaintiff.

6 WHEREFORE Plaintiff prays for Punitive and general Damages against the Defendants
7 jointly and severally, for Tortious Battery.

8 **COUNT V11**

9 **(Negligence)**

10 43. Plaintiff's repeat an re-alleges the allegations contained in paragraphs 1 through 75
11 above and incorporates the same as if set forth in full.

12 44. Defendants "JOSE", "MICHAEL" AND "OSCAR", have a legal duty to prevent and
13 refrain from conduct that deters, suppresses, or otherwise breach Plaintiff Constitutionally
14 protected rights and clearly established law regarding how public servants conduct themselves
15 with respect to the people and citizens of these United States.

16 45. Because of the foregoing, Defendants were the actual and proximate cause of all
17 injury suffered by Plaintiffs.

18 WHEREFORE Plaintiff prays for Punitive and General Damages against the Defendants
19 jointly and severally, for Tortious Negligence.

20 **COUNT V111**

21 **(False Imprisonment)**

22
23 46. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 45
24 above and incorporates the same as if set forth in full.

25 47. Defendants "JOSE" "MICHAEL" AND "OSCAR" physically held, and authorized to
26 be held, Plaintiff with the intention of keeping her in confinement and there was no possibility
27 of escape for Plaintiff.
28

1 48. WHEREFORE Plaintiff prays for Punitive and General Damages against the
2 Defendants jointly and severally, for Tortious False Imprisonment.

3 **COUNT 1X**

4 **(Intentional Infliction of Mental Distress)**

5 49. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 83
6 above and incorporates the same as if set forth in full.

7 50. Defendants conduct was grossly unreasonable, and as a direct and proximate result of
8 their actions Plaintiff has sustained substantial emotional distress from the unreasonable search
9 and seizure and the assault and battery.

10 WHEREFORE Plaintiff prays for Compensatory and Punitive Damages against the
11 Defendants jointly and severally, for the Tort of Intentional Infliction of Mental Distress.

12 WHEREFORE Plaintiff prays for Punitive and General Damages against the defendants
13 jointly and severally, for the Tort of Intentional Infliction of Mental Distress.

14
15 **WHEREFORE**, Plaintiff prays for relief against Defendants, and each of them, as follows:

16 **AS TO COUNT 1-V**

- 17 a) For general damages against defendants JOSE, MICHAEL AND OSCAR in their
18 individual and official capacities in the amount \$1,500,000.00 For Plaintiff's husband
19 Dean Franco \$1,000,000.00
- 20 b) For punitive damages against the appropriate Defendants in the amount of \$1,500,000.00
21 For Plaintiff's husband Dean Franco \$1,000,000.00
- 22 c) For compensatory damages against the appropriate Defendants in the amount of
23 \$2,000,000.00 For Plaintiff's husband Dean Franco \$2,000,000.00


24
25 **AS TO COUNT V-1X**

- 1 d) For general damages against defendants JOSE, MICHAEL AND OSCAR in the amount
2 of \$1,500,000.00 or as allowed by law. For Plaintiff's husband Dean Franco
3 \$1,500,000.00 or as allowed by law.
4 e) For punitive damages in the amount allowed by law. For Plaintiff's husband Dean
5 Franco \$1,500,000.00 or as allowed by law.
6 f) Reasonable legal costs & fees, along with costs of suit; and,
7 g) Such other relief as this Court may find to be just and proper.
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9
10

11 **DEMAND FOR TRIAL BY JURY**

12 **I DECLARE UNDER PENALTY OF PERJURY THE FOREGOING IS TRUE**
13 **AND CORRECT TO THE BEST OF MY KNOWLEDGE.**

14 DATED this 30 day of Sept., 2013
15
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19 
20 Original Signature
21 925.525.5004
22 Noemi Franco
23 1141 Boundary Street
24 Anthony, New Mexico 88021

25 *In Proper Person*
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EXHIBIT “A”

STATE OF NEW MEXICO
COUNTY CLERK
CONA ANA COUNTY

Witness My Hand And Seal Of Office,
Lynn J. Ellins, County Clerk, Dona Ana, NM
Reena Rodriguez

AFFIDAVIT OF STATUS OF NOEMI FRANCO

[illegible]

Comes now, Noemi Franco, your Affiant, being competent to testify and being over the age of 21 years of age, after first being duly sworn according to law to tell the truth to the facts related herein states that Noemi Franco, has firsthand knowledge of the facts stated herein and believes these facts to be true to the best of Noemi Franco knowledge.

1. That your Affiant is one of the People of these united States of America, being a creation of God and live in El Paso, Texas, in one of the several States.
2. Your Affiant is a living, breathing, sentient being on the land, a Natural Person, and therefore is not and cannot be any ARTIFICIAL PERSON and, therefore, is exempt from any and all identifications, treatments, and requirements as any ARTIFICIAL PERSON pursuant to any process, law, code, or statute or any color thereof.
3. Your Affiant notices that in these united States of America, the authority of any and all governments resides in the People, the Natural Persons, of the land, for government is a fiction of the mind and can only be created by the People, effected by the People, and overseen by the People for the benefit of only the People.
4. Your Affiant at all times claims all and waives none of Noemi Franco's God given inherent, unlimited, unalienable, secured and guaranteed Rights pursuant to the Declaration of Independence and the Constitution of the united States of America as ratified 1791 with the Articles of the Amendments.
5. Your Affiant notices that pursuant to the Constitution of the united States of America as ratified 1791 with the Articles of the Amendments, Article VI paragraph 2, "This Constitution and the Laws of the united States which shall be made in Pursuance thereof; and all Treaties made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding".
6. Your affiant notices, that as a matter of their lawful compliance to the referenced Constitution, any of the People, while functioning in any Public capacity, in return for the trust of the other People, are granted limited delegated authority of and by the People, with specific duties delineated in accordance thereof, shall only do so pursuant to a

lawfully designated, sworn and subscribed Oath of Office and with any and all bonds and other requirements thereof, to ensure their faithful performance to the other People.

7. Your Affiant notices that the only court lawfully authorized by the People pursuant to said Constitution to hear matters in controversy of the People, civil or criminal, is a court that conforms to and functions in accordance with Article III Section 2 of said Constitution in which all officers of the court have and abide by their sworn and subscribed oaths of office supporting and defending the Rights of the People, and in which all matters are heard in accordance with all aspects of due process of law and only Trial by jury and in keeping with the Amendments V, VI, and VII.

8. Your Affiant notices that pursuant to this supreme Law of the Land and the God given Rights secured and guaranteed therein, said Constitution is established to ensure that the dominion granted by God to all People, on this land, shall endure, and ensure forever that this People on this land be free from any and all slavery, indenturement, tyranny, and oppression under color of any law, statute, code, policy, procedure, or of any other type.

9. Your Affiant further notices that pursuant to said Constitution, Affiant cannot be compelled, manipulated, extorted, tricked, threatened, placed under duress, or coerced, or so effected by any Natural Person, who individually, or in any capacity as or under any Artificial Person, agency, entity, officer, or party, into the waiving of any of Affiant's Rights, or to act in contradiction thereof, or to act in opposite of the moral conscience and dominion granted Affiant by God; nor can Affiant be deprived of any of these Rights, privileges, and immunities, except by lawful process in accordance with said Constitution, without that Natural and/or Artificial Person, in whatever capacity, in so doing, causing injury to your Affiant and thereby committing numerous crimes, requiring lawful punishment there from.

Further, Affiant sayeth naught.

Signature Noemi Franco 7/14/2012
 Dean Franco July 14, 2012

State of New Mexico Noemi Franco

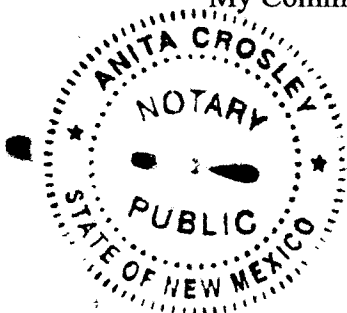
County of Sandoval

Subscribed and sworn to (or affirmed) before me on this 14 day of July, 2012
 by Dean Franco, proved to me on the basis of satisfactory evidence to be the person(s)
 who appeared before me.

Anita Crosley
 Notary Public

4-6-2013

My Commission expires



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EXHIBIT “B”

Exhibit

DECEPTIVE BUSINESS PRACTICE

NO. 20130C 09118

STATE OF TEXAS

VS

NOEMI FRANCO
132 FESTIVAL DR APT B
EL PASO, TX 79912

ALSO HAS ADDRESS
1141 BOUNDARY ST.
ANTHONY, NEW MEXICO 88021

WARRANT NO.:
OUTSTANDING WARRANT

DOB: 9/28/1959

() SUMMONS REQUESTED

COMPLAINT FILED IN THE

CCP
OF EL PASO COUNTY, TEXAS,
ON
AT O'CLOCK, .M.

DEPUTY COUNTY CLERK
EL PASO COUNTY, TEXAS

FILED FOR RECORD
IN MY OFFICE
2013 AUG 12 PM 5:33
Debi Dierman
COUNTY CLERK
EL PASO COUNTY, TEXAS

Offense Code: 26990048
Applies to all counts

Deceptive Trade Practice

DECEPTIVE BUSINESS PRACTICE

NO. 20130C

09118

COPY

STATE OF TEXAS

VS

NOEMI FRANCO
132 FESTIVAL DR APT B
EL PASO, TX 79912

ALSO HAS ADDRESS
1141 BOUNDARY ST.
ANTHONY, NEW MEXICO 88021

WARRANT NO.:
OUTSTANDING WARRANT

DOB: 9/28/1959

() SUMMONS REQUESTED

COMPLAINT FILED IN THE

cccl
OF EL PASO COUNTY, TEXAS,

ON

AT O'CLOCK, .M.

DEPUTY COUNTY CLERK
EL PASO COUNTY, TEXAS

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS, I, Pablo Fernandez, DO SOLEMNLY SWEAR THAT I HAVE GOOD REASON TO BELIEVE AND DO BELIEVE THAT HERETOFORE, TO WIT, ON OR ABOUT

OCTOBER 4, 2012

IN THE COUNTY OF EL PASO, STATE OF TEXAS

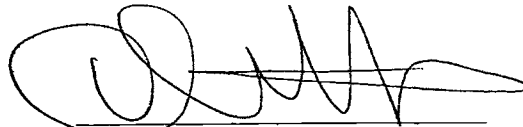
NOEMI FRANCO

DID THEN AND THERE IN THE COURSE OF BUSINESS, DOING BUSINESS AS A JOME REMODELER, INTENTIONALLY, KNOWINGLY AND RECKLESSLY COMMIT A DECEPTIVE BUSINESS PRACTICE IN CONNECTION WITH THE SALE OF PROPERTY AND SERVICES TO PABLO FERNANDEZ, BY SELLING, AND THEN BY DELIVERING AFTER THE SALE, LESS THAN THE REPRESENTED QUANTITY OF PROPERTY OR SERVICES; TO WIT: SOLD GRANITE TO PABLO FERNANDEZ AND THEN FAILED TO DELIVER GRANITE TO PABLO FERNANDEZ AS REPRESENTED.

AGAINST THE PEACE AND DIGNITY OF THE STATE


AFFIANT

SWORN TO AND SUBSCRIBED BY AFFIANT BEFORE ME THE UNDERSIGNED AUTHORITY, ON 8/5/13, 2013.


ASSISTANT COUNTY ATTORNEY
FOR EL PASO COUNTY,
STATE OF TEXAS

DECEPTIVE BUSINESS PRACTICE

NO. 20130C0 9118

STATE OF TEXAS

VS

NOEMI FRANCO
132 FESTIVAL DR APT B
EL PASO, TX 79912

ALSO HAS ADDRESS
1141 BOUNDARY ST.
ANTHONY, NEW MEXICO 88021

WARRANT NO.:
NA

DOB: 9/28/1959

() SUMMONS REQUESTED

INFORMATION FILED IN THE

ccu
OF EL PASO COUNTY, TEXAS,
ON
AT O'CLOCK, .M.

DEPUTY COUNTY CLERK
EL PASO COUNTY, TEXAS

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS, CLINTON CROSS, ASSISTANT COUNTY ATTORNEY IN AND FOR THE COUNTY OF EL PASO, STATE OF TEXAS, PRESENTS TO THE _____ OF EL PASO COUNTY, TEXAS, IN AND FOR SAID COUNTY, AT ITS JULY TERM A. D. 2013 THAT ON OR ABOUT

OCTOBER 4, 2012

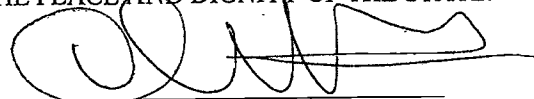
IN THE COUNTY OF EL PASO, STATE OF TEXAS

NOEMI FRANCO

COUNT ONE

DID THEN AND THERE IN THE COURSE OF BUSINESS, DOING BUSINESS AS A JOME REMODELER, INTENTIONALLY, KNOWINGLY AND RECKLESSLY COMMIT A DECEPTIVE BUSINESS PRACTICE IN CONNECTION WITH THE SALE OF PROPERTY AND SERVICES TO PABLO FERNANDEZ, BY SELLING, AND THEN BY DELIVERING AFTER THE SALE, LESS THAN THE REPRESENTED QUANTITY OF PROPERTY OR SERVICES; TO WIT: SOLD GRANITE TO PABLO FERNANDEZ AND THEN FAILED TO DELIVER GRANITE TO PABLO FERNANDEZ AS REPRESENTED.

AGAINST THE PEACE AND DIGNITY OF THE STATE.

A handwritten signature in black ink, appearing to be 'Clinton Cross', written over a horizontal line.

ASSISTANT COUNTY ATTORNEY
FOR EL PASO COUNTY,
STATE OF TEXAS

No. 2013-01967B

SUPPLEMENTAL REPORT

El Paso County Sheriff's

OCA 201301967

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Investigator: Martinez, Oscar 2085

Date / Time: 06/13/2013 14:26:56

Thursday

Contact:

Reference: ARREST SUPPLEMENT

COMPLAINT AFFIDAVIT

EL PASO COUNTY, TEXAS

THE STATE OF TEXAS
COUNTY OF EL PASO

COURT NO.

M6213-0195

Filing Agency: El Paso Sheriff's Office

Offense Report #: 2013-01967

Date of offense: 10-04-2012

Defendant Name: NOEMI FRANCO Date of birth: 09-28-1959

Offense: Deceptive Business Practice, 32.42

IN THE NAME AND AUTHORITY OF THE STATE OF TEXAS BEFORE ME, the undersigned authority, on this day personally appeared Det. Oscar Martinez, #1104, who after being me duly sworn, on oath deposes and says that he has good reason to believe and does believe that heretofore to wit: on or about the 4th day of October, 2012 and before the filing of this complaint in the County of El Paso, the State of Texas, one NOEMI FRANCO, 09-28-1959, Hereinafter called the DEFENDANT, did then and there unlawfully, commits the offense of deceptive business practice in the course of business by intentionally, knowingly, recklessly, or with criminal negligence commits one or more of the following deceptive business practices by representing that a commodity or service is of a particular style, grade, or model if it is of another; advertising property or service with intent: not to sell it as advertised, or not to supply reasonably expectable public demand, unless the advertising adequately discloses a time or quantity limit; representing the price of property or service falsely or in a way tending to mislead; making a materially false or misleading statement of fact concerning the reason for, existence of, or amount of a price and making a materially false or misleading statement: in an advertisement for the purchase or sale of property or service, a Class A misdemeanor.

FACTS IN SUPPORT:

On October 3, 2012, the victim located an advertisement on 'Craigslist' in which the sellers, the defendant and co-defendant, who appeared to be husband and wife, offered remodeling services. He called them on the phone and told the defendant that he was looking for someone to put granite in his kitchen and bathroom in his home at 13401 Boots Green, El Paso County TX. The Craigslist website was titled "http://www.francogranite.com" The victim contacted the defendant and co- defendant, using the information provided, (925) 525-5004 and (925) 250-4343.) The defendant and co- defendant agreed to visit his house for the purpose of providing a "free" estimate.

On October 3, 2012, the defendant and co- defendant, who identified themselves by name, arrived at his residence to conduct a free estimate. The co- defendant took the measurements for the granite work and estimated the price of \$1,200.00 dollars to remodel the kitchen and \$500.00 to remodel the bathroom. Both the defendant and co- defendant showed him granite samples and he picked two of the samples. He agreed upon this price and paid the defendant \$300.00 dollars as a deposit and she gave him a receipt numbered 002013. The co- defendant gave the victim a business card with the advertised name of Colonial Carpet Distributing LLC, www.Francogranite.com with California cellphone numbers and no local address.

SUPPLEMENTAL REPORT

El Paso County Sheriff's

OCA 201301967

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

On October 4, 2012, the victim called them back and spoke to the defendant. He advised her that he only wanted the bathroom remodeled for the agreed upon price. He also spoke to the co- defendant as well and the co- defendant became frustrated. The co- defendant gave him a new price to complete the bathroom alone as \$600.00 dollars. He agreed to the new price with them and asked them to begin work immediately.

Days went by and they never showed to begin the work, so the victim made multiple attempts to contact them to determine when they would arrive to begin the work. The victim told them that he was going to file a criminal complaint and was told that it was a civil problem and not a criminal offense. Weeks and then months began to pass and they would not answer their telephone. To this date, the victim have not had the granite work done by them nor have they returned his money.

Affiant called the defendant for an interview and she told him that it was a civil problem and not a criminal offense. The defendant also sent a letter to Affiant, stating that the complaint was not made under oath, not supported by an affidavit, that she could not be compelled, manipulated or tricked and provided a list of fines caused by crimes by government officers.

On 06-12-2013, the victim was shown six photos of males and he identified the defendant. He was also shown six photos of females and identified the co- defendant.

Affiant requests an arrest warrant for deceptive business practice, a Class A misdemeanor.

Against the peace and dignity of the State.

Affiant

Sworn to and subscribed before me, and filed in this court, this the 17 day of June, 2013.
Probable Cause for issuance of Warrant found.

Judge,
El Paso Justice Ct. Pet #
Of El Paso County, Texas

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EXHIBIT “C”

EL PASO COUNTY SHERIFF'S DEPARTMENT VEHICLE IMPOUND INVENTORY

Date: 06-20-13 Ofc: Lara Case #: 01967
 Charge: Driving while intoxicated Loc. 1245 Horizon
 Driver: Francis, Dean
 Owner: Francis, Alan / Burgara, Javier
 Yr. 08 Make: AMC Model: AMC Style: 4D
 Color: Red VIN: WDDGFS4X38R033085
 Lic. #: CM13-G494 State: TX Year: 2013
 Wrecker Svc.: AD
 Time: 1600 Sheriff's Hold: YES / NO Why:

Check if on vehicle/indicate number of items.

Battery	<u>1</u>	Windows	<u>4</u>	Heater	<u>1</u>
Engine	<u>1</u>	Doors	<u>4</u>	Clock	<u>1</u>
Trans.	<u>1</u>	Mirrors	<u>2</u>	Lighter	<u>1</u>
Tires	<u>4</u>	Rims	<u>4</u>	Antenna	<u>1</u>
Seats	<u>2</u>	Hubcaps	<u>4</u>	Radio	<u>1</u>
Keys	<u>1</u>	Spare	<u>1</u>	Jack	<u>1</u>
Tire Tool	<u>1</u>	Mileage	<u>01,231</u>		

Damage:

Notes: Found Gun in trunk (MISC), Drill
Found Gun in trunk (MISC), Drill
Found Gun in trunk (MISC), Drill

Item(s) removed from vehicle: Gun, Drill

Disposition of occupants: In custody

Warrant/Citation #:


Wrecker Driver:

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EXHIBIT “D”

7. Affiant has not been accused via lawfully sworn affidavit or any other accusatory instrument by any first hand material witness that Affiant by her actions has caused injury to any party in keeping with any agreement or contract.
8. Affiant has not been accused via sworn affidavit or any other accusatory instrument by any first hand material fact witness of unlawfully applying or unlawfully using any funds.
9. Affiant has not been allowed at any time to face any accuser nor has the nature of this and cause of any charges been presented to Affiant specific to this matter as required per Affiant's guaranteed 6th. And 14th. Amendment protections of the Federal Constitution.
10. Affiant has only been presented with documents bringing charges unsupported by any lawfully sworn affidavit or accusatory instrument from any first hand material fact witness alleging any injury of relevant party specific to this matter.
11. Affiant notices that the complaint in this matter is not sworn under oath before any lawfully recognized party.
12. Affiant notices that the complaint in this matter is not supported by any affidavit from any first hand material fact witness alleging any injury.

Further, Affiant sayeth naught.




Noemi Franco

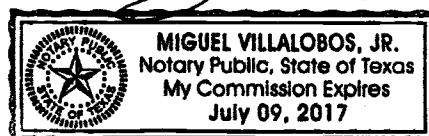
05/15/2013
Date

State of TEXAS
County of EL PASO

Subscribed and Sworn to (or affirmed) before me on this 15th. day of May, 2013.
By Noemi Franco, proved to me on the basis of satisfactory evidence to be the
person who appeared before me.



Notary Public



7011 2000 0000 8025 0332 T101

(Domestic Mail Only, No Insurance Coverage Allowed)
 Special Information: Mail Only, No Insurance Coverage Allowed

EL PASO TX 79938

Postage	\$	\$1.32	0093
Certified Fee		\$3.10	09
Return Receipt Fee (Endorsement Required)		\$2.55	Postmark: Here
Restricted Delivery Fee (Endorsement Required)		\$0.00	
Total Postage & Fees	\$	\$6.97	07/08/2013

Sent To: **OSCAR Martinez detective**
 Street, Apt. No.,
 or PO Box No. **3850 Justice Dr.**
 City, State, ZIP+4: **El Paso, TX 79938**

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Affidavit of Events
EXHIBIT "E"

I have the Original, Copy and Notarized.

*Danni
Bauer*

Noemi Franco Aguilar
1141 Boundary St.
Anthony, New Mexico, 88021

AFFIDAVIT OF NOEMI FRANCO
STATE OF NEW MEXICO

COUNTY OF DONA ANA

)
) ss
)

Comes now, Noemi Franco, Your Affiant, being competent to testify and being over the age of 21 years of age, after first being duly sworn according to law to tell the truth to the facts related herein states the she has firsthand knowledge of the facts stated herein and believes these facts to be true to the best of her knowledge.

1. Your Affiant, Noemi Franco, was traveling being a passenger with her husband Dean Franco, peacefully parked outside Petro, 1295 Horizon Blvd, EL Paso, Texas 79927
2. Your Affiant and her husband Dean Franco were visiting clients for estimates about our granite business. We were waiting for a client for an estimate.
3. On or about Wednesday, June 19, 2013 JOSE A. KLUGE, MICHAEL LARA, and OSCAR MARTINEZ along with other males, who were at no point identified, "ambushed Affiant and Affiant's husband, obstructed, blocked, and parked in front of our vehicle
4. JOSE A. KLUGE proceeded to order Affiant to step out of her vehicle, which Affiant declined several times. JOSE A. KLUGE continued to "order" Affiant to step out of her vehicle several times. Affiant was demanding repeatedly to be presented with JOSE A. KLUGE's Oath of office, Surety bond, warrant for Affiant and Affiant's husband arrest.
5. JOSE A. KLUGE told Affiant repeatedly he didn't have to show her anything. Affiant requested, the complaint from the complainant, affidavits from the applicant under Oath. JOSE KLUGE told Affiant repeatedly he didn't have to show her anything, Affiant kept demanding the warrant for her and husband's arrest. JOSE A. KLUGE told Affiant he was going to count to three and if she didn't step out of her vehicle, he (JOSE) would pull her out of her vehicle by force.
6. Affiant replied and told JOSE he would have to pull her out of her vehicle by force because Affiant was not going to step out of her vehicle unless, she is presented with the required elements of law.
7. JOSE A. KLUGE refused and ignored Affiant's requests, proceeded to count to three and pull Affiant out of her vehicle by force dislocating Affiant's right shoulder and bruising her right arm.
8. Simultaneously, Affiant looked over to see MICHAEL LARA and OSCAR MARTINEZ ordering Affiant's husband (being the driver) to step out of the vehicle, whom humbly obeyed and agreed to the detective's orders.
9. MICHAEL LARA and OSCAR MARTINEZ proceeded to place Affiant's husband hands behind his back, handcuffed him and then escorted him inside one of the private vehicles they (Detectives) were driving, where there was lack of ventilation, no air conditioner inside the vehicle, about 103° degrees outside.
10. Affiant's husband suffers from serious health conditions, which are: (High blood pressure, diabetes, and arthritis. Then minutes later JOSE A. KLUGE approached Affiant's face and

said to her, look at your husband, he is smart, he is being quiet, he is not asking any questions.

11. JOSE A. KLUGE was visibly irritated because Your Affiant, Noemi Franco, was demanding to see the warrant for affiant and Affiant's husband's arrest and required elements of law.
12. Your Affiant, Noemi Franco, made several attempts to make JOSE A. KLUGE, MICHAEL LARA AND OSCAR MARTINEZ understand they were in violation of many of her God granted rights. Approximately an hour passed, and finally MICHAEL LARA showed Affiant a warrant from far away, Affiant couldn't see anything, MICHAEL LARA yelled at her "see!!! here is the warrant" Affiant couldn't see anything.
13. Raising his voice louder JOSE A. KLUGE advised Affiant, "I am going to record you Ok.? Once JOSE A. KLUGE was ready to record, then proceeded to ask Affiant in an authoritative tone of voice, how many times did I have to ask you to step out of your vehicle? How many times? Why did I have to ask you many times?.
14. After JOSE A. KLUGE finished recording the conversation, then Affiant questioned JOSE "Can I record you also? with sarcasm JOSE replied "jaja" are you ready to record me? Your Affiant was handcuffed at this point. Out of fear Affiant told JOSE she is a lawyer and she knows the law.
15. Your Affiant, Noemi Franco, noticed MICHAEL LARA was inside Affiant's vehicle searching her vehicle, personal documents and personal belongings, removing all items from Affiant's vehicle, purse and wallet, MICHAEL LARA then, gave all Affiant's documents to JOSE.
16. Affiant turned around and noticed MICHAEL LARA was inside Affiant's vehicle and was driving it to place it in a towing truck AD Towing and Recovery.
17. Your Affiant, Noemi Franco, did notice her husband Dean Franco was handcuffed, with his hands behind him, and did not look like he was feeling well, Detective OSCAR MARTINEZ had placed her husband Dean Franco inside one of the private vehicles they(detectives) were driving, lack of ventilation, without air conditioner inside the vehicle, and with a temperature of 103° degrees outside. Affiant's husband suffers from serious health conditions which are: high blood pressure, diabetes and arthritis. Affiant's husband, Dean Franco was watching everything that was happening from inside the private car. (Dean Franco is Affiant's witness)
18. By then, when JOSE KLUGE AND OSCAR MARTINEZ finally took Affiant inside the detective's vehicle, where Affiant's husband was being detained and apprehended.
19. Affiant was able to speak to Affiant's husband whom, he was not feeling well, Then, Affiant and Affiant's husband were transported to the Sheriff's station 3850 Justice Drive, where JOSE KLUGE AND MIKE LARA continued to harass and oppress Affiant, by being rude and mean to her.
20. Once in the Sheriff's station, again JOSE KLUGE AND MICHAEL LARA search and research Affiant's purses, removed all business cards, including Affiant's driver's License and other private documents.
21. Your Affiant requested and pleaded to JOSE AND MICHAEL LARA to let her keep her nicer purse because she had purchase it two days earlier, ! they decline!! To later advise Affiant "We are keeping your nicer purse "as evidence".
22. Affiant kept quiet, and said nothing else.

23. Your Affiant, Noemi Franco, and her husband Dean Franco, were transported to Downtown El Paso, Texas at Myrtle Street to stand in front of Magistrate Judge, but before going in front of the Judge, Detective OSCAR MARTINEZ "order us" to be quiet, to not to say anything to the judge, to not to ask any questions, just to be quiet, and not to speak.
24. Your Affiant, Noemi Franco, and her husband were escorted to the County jail, when Affiant noticed husband Dean Franco talking to the nurse, whom was very concerned about Affiants's blood pressure, it was very high, 350/180mmHg, Affiant heard the nurse asking detective OSCAR MARTINEZ if he could override him because her Affiant's husband couldn't be booked, his blood pressure was very high.
25. Your Affiant, Noemi Franco, then questioned Detective OSCAR MARTINEZ about who was going to be responsible for her husband's health? Affiant's husband Dean Franco was in need to go to the hospital, Affiant was informed by the County jail nurse, her husband shouldn't be booked because of his high blood pressure, it was very high because he was left inside the Detective's car for more than 40 minutes, without proper ventilation no air conditioner inside the detective's vehicle, and no help of any kind. 103° degrees temperature outside.
26. Your Affiant, Noemi Franco, was pleading to Detective OSCAR MARTINEZ for Affiant's husband's health and life. Detective OSCAR MARTINEZ without remorse booked him anyway, approximately an hour later, Affiant noticed husband was taken to the hospital, Thomason Hospital.. Affiant was afraid and concern for husband's health and life. Affiant's husband's life was in danger under the detectives custody.
27. Your Affiant, Noemi Franco, was incarcerated for approximately fourteen hours, spent the night in jail, where Your Affiant was served bread and oatmeal the next morning.
28. Your affiant, Noemi Franco, and husband, Dean Franco, paid excessive bail in order to get out of jail. \$10,000.00 Dlr. Bond each, (Affiant and Affiant's husband. The same day Affiant was released from custody and her inventoried items returned.
29. Your Affiant, Noemi Franco, and husband Dean Franco were treated harshly in the hands of Detectives JOSE A. KLUGE, OSCAR MARTINEZ AND MICHAEL LARA in retaliation to an affidavit of no foundation that was sent by your Affiant, Noemi Franco, to Detective OSACR MARTINEZ approximately two or three weeks before the arrest.
30. Your Affiant, Noemi Franco, was unable to recuperate Affiant's vehicle from the towing place AD Towing and Recovering until Saturday 22, 2013 and noticed all her papers and personal belongings were upside down inside her vehicle.
31. Your Affiant, Noemi Franco, called Detective OSCAR MARTINEZ every day, for four days concerning her purse they kept "as evidence" in her case, he informed Affiant, Detective MICHAEL LARA was in possession of her purse, and private documents to go ahead and call him.
32. Your Affiant, Noemi Franco, paid \$150.00 Dlr. Approximately in order to get her vehicle returned to her, then, Affiant remembered Affiant had some money inside her vehicle, the money was never recovered.
33. Your Affiant, Noemi Franco, later communicated with MICHAEL LARA in order to recuperate her purses, personal belongings and private papers, Affiant requested said items and MICHAEL LARA agreed and advise Affiant to go ahead and hire a lawyer as soon as possible because she was going to need one.

34. MICHAEL LARA requested Affiant to come by the Sheriff's Office to pick up said items. Affiant also informed MICHAEL LARA " Affiant loves her public servants but, you people (Detectives) habitually violate the rights of the people. Your Affiant, Noemi Franco, has been lawfully violated in accordance with the United states Constitution, Bill of Rights, Amendment's I, IV, V, VI, VIII, and IX.

Signature

Noemi Franco.
Noemi Franco

Date: 06-27-2013

State of _____

County of _____

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 2013 by Noemi Franco, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Notary Public (Seal)

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EXHIBIT “F”



**JO ANNE BERNAL
COUNTY ATTORNEY**

**EL PASO COUNTY TEXAS
COUNTY COURTHOUSE
500 E. SAN ANTONIO, ROOM 503
EL PASO, TEXAS 79901**

**(915) 546-2050
FAX: (915) 546-2133**

July 19, 2013

~~NOEL FRANCO~~
132 FESTIVAL DR APT B
EL PASO, TX 79912

RE: Consumer Complaint filed by PABLO FERNANDEZ

Dear MS FRANCO:

This office has received a complaint filed against you or your business (El Paso Police Case Number: 2013-01967-B). The complaint is being evaluated to determine if the Deceptive Business Practice Statute has been violated.

Texas law provides that an individual who commits a deceptive business practice receive a maximum punishment of one (1) year in jail and a \$4,000.00 fine. Texas law also provides that if a corporation or association commits a deceptive business practice, a penalty of both imprisonment and a maximum fine of \$10,000.00 may be imposed. Alternatively, the Court may impose a maximum fine of double the amount gained or losses caused by the association, whichever is less.

As a matter of courtesy, we are bringing this matter to your attention to allow you the opportunity to provide this office with any additional or contrary information. If you choose to respond to this letter, please send your response in writing to this office in a timely manner.

Sincerely,

A handwritten signature in cursive script that reads "M. Medina".

Margie Medina
Paralegal

CC:mm

COUNTY COURT ADMINISTRATION
EL PASO COUNTY COURTHOUSE
500 E. SAN ANTONIO – ROOM 302
EL PASO, TEXAS 79901

TODAYS DATE: June 28, 2013

STATE OF TEXAS
VS

DEAN GREGORY FRANCO

DATE OF BIRTH: 11/25/61

ADDRESS: 1141 BOUNDARY ST

~~CHAPARRAL~~, NM 88021

Anthony

CHARGE: DECEPTIVE BUSINESS PRACTICE

BONDSMAN E-Z III

BOND AMT: 10,000.00

REL. DATE: 06/21/13

SO NUMBER : 9559474

WARRANT #: M6213-0126

ARREST DATE: 06/20/13

JAIL ID #: 9570433

**YOUR CASE IS NOT FILED AND WE CANNOT SET A COURT
HEARING. A COURT DATE WILL BE MAILED TO YOU ONCE THE
CASE IS FILED.**

**SU CASO NO ESTA ARCHIVADO. NO LE PODEMOS DAR CITA DE
CORTE. QUANDO SU CASO ESTA ARCHIVADO LE MANDAMOS CITA
POR CORREO.**

REVISED: 3/10/2010

COUNTY COURT ADMINISTRATION

**EL PASO COUNTY COURTHOUSE
500 E. SAN ANTONIO – ROOM 302
EL PASO, TEXAS 79901**

TODAYS DATE: June 28, 2013

**STATE OF TEXAS
VS**

NOEMI FRANCO

DATE OF BIRTH: 09/28/59

ADDRESS: 1141 BOUNDARY ST

~~CHAPARRAL~~, NM 88021

Anthony

CHARGE: DECEPTIVE BUSINESS PRACTICE

BONDSMAN E-Z III

BOND AMT: 10,000.00

REL. DATE: 06/21/13

SO NUMBER : 9559471

WARRANT #: M6213-0125

ARREST DATE: 06/20/13

JAIL ID #: 9570431

**YOUR CASE IS NOT FILED AND WE CANNOT SET A COURT
HEARING. A COURT DATE WILL BE MAILED TO YOU ONCE THE
CASE IS FILED.**

**SU CASO NO ESTA ARCHIVADO. NO LE PODEMOS DAR CITA DE
CORTE. QUANDO SU CASO ESTA ARCHIVADO LE MANDAMOS CITA
POR CORREO.**



STATE OF TEXAS

Vs.

NOEMI FRANCO

DATE MAILED: August 21, 2013

CASE NO.: 20130C09118

BONDSMAN: EZ BAIL BONDS

ATTORNEY:

Charge: DECEPTIVE TRADE PRACTICE

ARRAIGNMENT/PRE-TRIAL has been scheduled in the above styled and numbered cause on September 11, 2013. You and your attorney are to report to COUNTY CRIMINAL COURT NUMBER ONE, 7TH FLOOR ROOM 705, 500 E. San Antonio Street, El Paso, Texas at 1:30 PM. If you fail to appear, a WARRANT will be issued for your arrest.

ALMA TREJO
JUDGE

ESTADO DE TEXAS

Vs.

NOEMI FRANCO

NUMERO DE CASO: 20130C09118

AFIANZADOR:

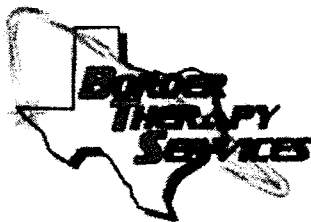
ABOGADO:

~~Acusacion:~~ DECEPTIVE TRADE PRACTICE

Este caso esta citado en la Corte de Leyes Criminal Numero Uno el September 11, 2013 a las 1:30 PM, 500 E. San Antonio Street, 7TH FLOOR/ROOM 705, El Paso, Texas. Falta de presentarse resultara en ORDEN DE ARRESTO.

ALMA TREJO
JUEZ

NOEMI FRANCO
132 FESTIVAL DR APT B
EL PASO TX 79912



836 E. Redd Rd
El Paso, Texas 79912
(915) 845-4060 Fax (915) 845-4065

Noemi Franco
1141 Boundary St.
Anthony, NM 88021

Dear Ms. Franco,

We want to offer you a warm welcome to our clinic and thank you for choosing Border Therapy Services. We hope that the attention you receive is to your satisfaction.

We strive to provide the utmost excellence in physical therapy care and to achieve great results with all of our patients.

We want to provide you with outstanding service in all areas of your therapy experience, including any concerns about scheduling, insurance and financial arrangements.

We would appreciate you communicating with us regarding your progress and any additional issues you wish us to address.

We look forward to helping you achieve your goals.

Sincerely,

Paige Farrell, PT
Paige Farrell, PT
Patient Representative



2280 Trawood • El Paso, TX 79935

915-595-3535 • Fax 915-595-3922

836 E. Redd Rd. Ste. B • El Paso, TX 79912

915-845-4060 • Fax 915-845-4065

4242 Hondo Pass • Suite 110 • El Paso, TX 79904

915-751-0599 • Fax 915-751-0559

**Mark Boncser, MSPT, OCS, FAAOMPT • Danny Gonzalez, PT, OCS • David Rachel, PT • Kristan Holloway, DPT
Joaquin Santillan, MPT, FAAOMPT • Paul Garrido, MPT • Christa Brinjas, MPT • Jesus Vasquez, PTA**

Patient's Name: Franco Noemi Date: 9/5-13

Diagnosis: ☒ Right ☐ Left shoulder & upper back pain

Frequency: 1-2 3 4 5 x/wk

Duration: 1 2 3 4 5 6 x/wk

☐ Evaluate and Treat

☐ Follow _____ Protocol

☐ Aquatic Therapy

Modalities:

- ☐ Electrical Stimulation
- ☐ Ultrasound
- ☐ Traction
- ☐ TENS
- ☐ Paraffin Bath
- ☐ Iontophoresis/Phonophoresis
- ☐ Cryotherapy
- ☐ Moist Heat

Procedures:

- ☒ Therapeutic Exercise
- ☒ Back Stabilization/Rehab
- ☐ Neck Rehabilitation
- ☒ Postural Rehabilitation
- ☒ Shoulder Rehabilitation
- ☐ Elbow Rehabilitation
- ☐ Wrist/hand Rehabilitation
- ☐ Hip Rehabilitation
- ☐ Knee Rehabilitation
- ☐ Ankle Rehabilitation
- ☐ Massage
- ☐ Joint Mobilization
- ☐ Soft Tissue Mobilization
- ☐ Gait Training
- ☐ Home Program

Evaluations:

- ☐ AMA Impairment Meas.
- ☐ Muscle Test
- ☐ Pinch Test
- ☐ Grasp Test
- ☐ Rom Measurements

Home Units/Supplies

- ☐ Tens Rental
- ☐ Cervical Traction Kit
- ☐ Shoulder Pulley
- ☐ Theraband
- ☐ Theraputty
- ☐ Misc. _____

Specific Instructions: _____

I certify that therapy is Medically necessary.

Physician's Signature: [Signature]



Border Therapy Services

2280 Trawood, El Paso TX 79935
Ofc: 915-595-3535 Fax: 915-595-3922

836 E Redd Rd Ste B, El Paso TX 79912
Ofc: 915-845-4060 Fax: 915-845-4065

4242 Hondo Pass, Suite 110, El Paso TX 79904
Ofc: 915-751-0599 Fax: 915-751-0559

Date: 8/2/13

This is to certify that Noemi Franco was seen in
our office for physical therapy treatment on 8/2/13.

If you have any questions regarding appointments please
feel free to contact our office.

Sincerely,

David Rachel, PT

Mark Bonscer, MSPT

Danny Gonzalez, PT, OCS

Paul Garrido, PT

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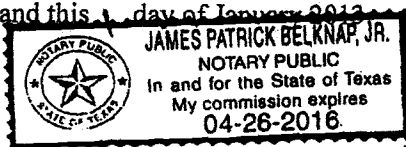
EXHIBIT “G”

DEPUTATION & OATH OF OFFICE

THE STATE OF TEXAS }
COUNTY OF EL PASO }

I, Richard D. Wiles, Sheriff of the County of El Paso and the State of Texas, having full confidence in MICHAEL LARA of said County and State, do hereby nominate and appoint the said MICHAEL LARA my true and lawful deputy, in my name, place and stead, to do and perform any and all acts and things pertaining to the office of said Deputy Sheriff of said County and State, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue hereof.

Witness my hand this 1 day of January 2013.



[Signature]

Sheriff of El Paso County, Texas

Sworn to and subscribed before me, this 1 day of January 2013.

[Signature]

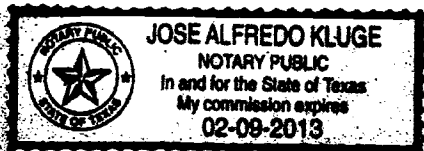
JUDGE or Notary Public

I, MICHAEL LARA, do solemnly swear (or affirm) that I have not directly nor indirectly paid, offered, or _____ promised to pay, contributed nor promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING STATEMENT AND THAT THE FACTS STATED THEREIN ARE TRUE.

[Signature] 1/7/2013
MICHAEL LARA Date

I, MICHAEL LARA, do solemnly swear (affirm) that I will execute the duties of Deputy Sheriff of the State of Texas, and will do the best of my ability to preserve, protect and defend the Constitution and laws of the United States and of this State, so help me God.



[Signature] 1/7/2013
MICHAEL LARA

Sworn to and subscribed before me, this 7 day of January 2013.

[Signature]

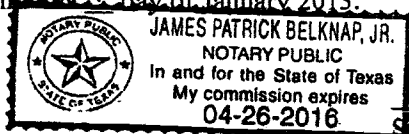
JUDGE or Notary Public

DEPUTATION & OATH OF OFFICE

THE STATE OF TEXAS }
COUNTY OF EL PASO }

I, Richard D. Wiles, Sheriff of the County of El Paso and the State of Texas, having full confidence in JOSE A. KLUGE of said County and State, do hereby nominate and appoint the said JOSE A. KLUGE my true and lawful deputy, in my name, place and stead, to do and perform any and all acts and things pertaining to the office of said Deputy Sheriff of said County and State, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue hereof.

Witness my hand this 1 day of January 2013.



Richard D. Wiles
Sheriff of El Paso County, Texas

Sworn to and subscribed before me, this 1 day of January 2013.

[Signature]
JUDGE or Notary Public

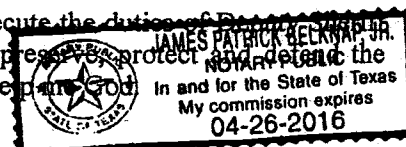
I, JOSE A. KLUGE, do solemnly swear (or affirm) that I have not directly nor indirectly paid, offered, or _____ promised to pay, contributed nor promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING STATEMENT AND THAT THE FACTS STATED THEREIN ARE TRUE.

[Signature]
JOSE A. KLUGE

01/02/2013
Date

I, JOSE A. KLUGE, do solemnly swear (affirm) that I will execute the duties of Deputy Sheriff of the State of Texas, and will do the best of my ability to preserve, protect and defend the Constitution and laws of the United States and of this State, so help me God.



[Signature]
JOSE A. KLUGE

Sworn to and subscribed before me, this 2 day of January 2013.

[Signature]
JUDGE or Notary Public

DEPUTATION & OATH OF OFFICE

THE STATE OF TEXAS }
COUNTY OF EL PASO }

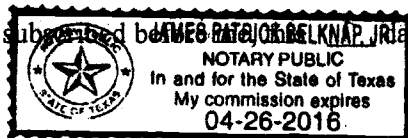
I, Richard D. Wiles, Sheriff of the County of El Paso and the State of Texas, having full confidence in OSCAR MARTINEZ of said County and State, do hereby nominate and appoint the said OSCAR MARTINEZ my true and lawful deputy, in my name, place and stead, to do and perform any and all acts and things pertaining to the office of said Deputy Sheriff of said County and State, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue hereof.

Witness my hand this 1 day of January 2013.



Sheriff of El Paso County, Texas

Sworn to and subscribed before me, this 1 day of January 2013.



JUDGE or Notary Public

I, OSCAR MARTINEZ, do solemnly swear (or affirm) that I have not directly nor indirectly paid, offered, or _____ promised to pay, contributed nor promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.


UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING STATEMENT AND THAT THE FACTS STATED THEREIN ARE TRUE.


OSCAR MARTINEZ

01-01-13

Date

I, OSCAR MARTINEZ, do solemnly swear (affirm) that I will execute the duties of Deputy Sheriff of the State of Texas, and will do the best of my ability to preserve, protect and defend the Constitution and laws of the United States and of this State, so help me God.

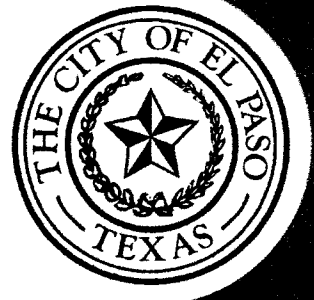

OSCAR MARTINEZ

Sworn to and subscribed before me, this 1 day of January 2013.


JUDGE or Notary Public

Dedicated to Outstanding Customer Service for a Better Community

SERVICE SOLUTIONS SUCCESS



6/24/2013

VIA Regular Mail:

Ms. Noemi Franco
1141 Boundary St.
Anthony NM 88021

RE: ***Open Records Request*** # W000272-062413 –

I am requesting the Oath of Office for: 1. Jose Kluge - Sheriff's Department 2. Mike Lara - Sheriff's Department 3. Oscar Martinez - Sheriff's Department

Dear Ms. Noemi Franco:

Your request, submitted, has been forwarded to me and is being treated as a request for records under the Texas Public Information Act (Tex. Gov't Code Ann. §552.001 *et seq.*). You requested the following information:

"...I am requesting the Oath of Office for: 1. Jose Kluge - Sheriff's Department 2. Mike Lara - Sheriff's Department 3. Oscar Martinez - Sheriff's Department."

Please be advised that I have been informed that there are no responsive documents pertaining to your request. As no responsive documents have been located, there is no charge associated with this response and this matter will be considered closed.

Sincerely,

Irma Marie Lopez
Public Records Coordinator
Communications and Public Affairs
(915) 541-4265
(915) 541-4866 (Fax)
OpenRecords@elpasotexas.gov

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Dr. Michiel R. Noe

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Cortney C. Niland

City Manager
Joyce A. Wilson

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EXHIBIT “#”

SHERIFF'S 132-61a (Revised 10-26-2007)

EL PASO COUNTY SHERIFF'S DEPARTMENT
PROPERTY RECEIPT

ITEM NUMBER

TIME: 1041 am pm

DATE: 07-09-13

CASE #: 2013

Property Office Use

Property received from

(Print Name)

(Address)

(Phone)

ITEM	DESCRIPTION OF PROPERTY (One item per line)	SERIAL NUMBER
1	brown Michael Kors purse	
2	Various paper work	
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

Above items of property received by

(Print Name)

(Signature)

BADGE NO.

Property Custodian receiving items:

(Signature)

(Date)

Referral Authorization

WESTWIND MEDICAL ASSOCIATES, P.A.
 6604 Westwind Dr
 Phone: (915)845-4600 Fax: (915)845-4602

Patient Information

Patient: <u>Noemi Franco</u>	Phone: <u>(925)525-5004</u>
Patient DOB: <u>09/28/1959</u>	
Provider: <u>MINA HAIDARIAN</u>	
Insurance: <u>MEDICARE/TRAILBLAZER HEALTH ENTIRE</u>	Insurance Phone: <u>(888)355-9165</u>
Group No. <u>None</u>	Policy #: <u>459575954A</u>
Guarantor: <u>Noemi Franco</u>	Relation To Guarantor: <u>Self</u>

Referral Information

PCP/Referring Physician: <u>MINA HAIDARIAN</u>	Specialty: <u>Family Practice</u>
Phone: <u>(915)845-4600</u>	
Specialist #1: <u>Elizabeth Richeson</u>	Specialty: <u>Psychiatry</u>
Phone: <u>(915)584-3636</u>	
Specialist #2: <u>-</u>	Specialty: <u>-</u>
Phone: <u>-</u>	
Authorization #: <u>-</u>	Referral #: <u>-</u>
Approved Visits: <u>-</u>	Remaining: <u>-</u>
Start Date: <u>-</u>	End Date: <u>-</u>
Allowed Amount: <u>-</u>	Remaining: <u>-</u>
Comment: <u>-</u>	

ICD

ICD Code	ICD Description
300.00	Anxiety state, unspecified

CPT

From CPT Code	From CPT Description	To CPT code	To CPT Description
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Additional Notes: _____

Referral Received (Circle): Automated Verbal Spoke with _____

Patient Informed: _____ Date: _____ Time: _____

Referral Sent to Treating Office: Method: _____ Date: _____ Time: _____